IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16050 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRAKUMAR PARSOTTAMBHAI MALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16050 of 2003

MR SL VAISHYA for Petitioner No. 1

MR SR GORI, ASST. GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by learned AGP Shri S.R. Gori for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. In very peculiar circumstances this petition has been filed by the petitioner, who is an owner of a mini bus. The petitioner had purchased the vehicle by taking loan from Banaskantha District Co-operative Bank Ltd., Deesa Branch, and, therefore, the vehicle had been hypothecated in favour of the said bank. The petitioner could not pay the amount due and payable to the bank and, therefore, the bank had taken possession of the vehicle in question.

3. In the aforestated circumstances, the petitioner, for some time, went on paying the tax. Subsequently, he made a request to the respondent authorities to put the vehicle to non-use as it was not possible for the petitioner to use the vehicle.

4. During the pendency of this petition, somehow the petitioner could manage to pay some amount to the creditor bank and, therefore, the bank has released the vehicle and now the vehicle is in possession of the petitioner.

5. In the meantime, as the petitioner could not pay a sum of Rs. 56,700/- by way of tax to the respondent authorities, notice was issued to the petitioner for making payment thereof. The petitioner has challenged the validity of the said notice before respondent No. 2 by filing an appeal. The said appeal is still pending.

6. Learned advocate Shri Vaishya appearing for the petitioner has submitted that because of financial difficulties being faced by the petitioner, it is not possible for him to pay the past dues especially when he had not plied the vehicle in the past.

7. Be that as it may, the petitioner's request is to make some arrangement so that he can start plying his vehicle and can start paying the amount of tax due and payable by him without prejudice to his right to agitate the issue before the appellate authority.

8. Learned AGP Shri Gori has submitted that substantial amount of tax has not been paid by the

petitioner and, therefore, the petitioner cannot be permitted to put the vehicle to non-use. At the same time he should also not be permitted to use the vehicle.

9. We have heard the learned advocates.

10. Looking to the fact that the petitioner could not use the vehicle for some time and now as the petitioner is having physical possession of the vehicle in question, he wants to use the vehicle, but as he is not having sufficient funds, in the interest of justice, we direct that the petitioner shall pay, on account, a sum of Rs. 20,000/- without prejudice to his right to agitate the issue with regard to unpaid tax before the appellate authority. The said amount shall be paid on or before 31.1.2004 and with effect from 1.1.2004, the petitioner shall be permitted to ply the vehicle on payment of usual current tax. The remaining amount of unpaid tax shall be paid in suitable instalments as the appellate authority might determine. It is hoped that the appeal filed by the petitioner shall also be decided as soon as possible and preferably before 31.3.2004.

11. The petitioner shall also file an undertaking to this court within 10 days from today to the effect that the petitioner shall pay a sum of Rs. 20,000/- by way of first instalment before 31.1.2004 and the amount of tax which might be finally determined by the appellate authority in accordance with law. A copy of the undertaking shall be served upon respondents Nos. 2 and 3.

In view of the above order, the petition is disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)